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OFFICE OF PETITIONS

In re Application of :
Richard Kroczek :
Application No. 10/647,072 :
Filed: August 22, 2003 :
Attorney Docket No. 7853-267 :

ON PETITION

This is a decision on papers styled, "Response to Notice to File Missing Parts and Petition Under 37 CFR 1.182 and 1.17(h)," filed on March 1, 2004, which is being treated as a petition under 37 CFR 1.53, requesting that the above-identified application be accorded a filing date of August 22, 2003, including Figure 10 described in the specification. The petition was recently forwarded to this office for review.

The application was submitted on August 22, 2003 as a continuation of prior application No. 09/509,283, filed August 11, 2000. However, on December 30, 2003, the Office of Initial Patent Examination (OIPE) mailed a "Notice to File Missing Parts of Nonprovisional Application" (Notice) that stated the application had been accorded a filing date, and among other items, that Figure 10 described in the specification appears to have been omitted.

In response, on March 1, 2004, the instant petition was submitted. Petitioner states:

"The instant application, which is a continuation application of application no. 09/509,283 (" '283 application"), was filed on August 22, 2003. The Notice contends that Figure 10 of the application was omitted from the instant application when it was filed.

Applicant respectfully points out that the instant application incorporates the '283 application by reference in its entirety. Because the '283 application contained Figure 10, the entry of Figure 10 into the specification would not constitute the addition of new matter to the application under 35 U.S.C. § 132. With this in mind, Applicant submits herewith a copy of Figure 10."

The application transmittal letter identified this application as a continuation application of prior application No. 09/509,283, filed August 11, 2000, and specifically incorporated by reference the disclosure of the prior application. Petitioner requests that the missing Figure be incorporated by reference from the prior application. A petition, however, is not required for such action.

MPEP 201.06(c) states:

B. Application Entitled to a Filing Date

If a continuation or divisional application as originally filed is entitled to a filing date despite the omission of a portion of the prior application(s), applicant will be permitted to add the omitted material by way of an amendment provided a statement was included in the application as originally filed that incorporates by reference the prior application(s). If the application as originally filed includes a proper incorporation by reference of the prior application(s), an omitted specification page(s) and/or drawing figure(s) identified in a "Notice of Omitted Item(s)" may be added by amendment provided the omitted item(s) contains only subject matter in common with such prior application(s). In such case, applicant need not respond to the "Notice of Omitted Item(s)." Applicant should submit the amendment adding the omitted material prior to the first Office action to avoid delays in the prosecution of the application. See MPEP 601.01(d) and 601.01(g).

If applicants desire that Figure 10 described in the specification be added to the application, the appropriate procedure is by way of amendment requesting the entry of the Figure. Any such amendment should be filed prior to the first action on the merits and will be considered by the primary examiner.

Accordingly, the petition is dismissed.

Please note, the petition fee will not be refunded, since the petition was not necessitated by any error on the part of the USPTO.

The application will be forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries should be directed to the undersigned at (571) 272-3228.



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